Course Goals, Objectives, and Expected Learning Outcomes

This course is essentially a semester-long examination of the various remedies available to people involved in the litigation process. More specifically, this course is structured to accomplish the following goals, objectives, and outcomes:

- Increasing your understanding of various types of remedies available in litigation, including damages, injunctions, restitution, contempt, and also gaining a basic understanding of remedial defenses;
- Gaining in-depth knowledge of the elements of each of the above remedies and defenses;
- Understanding the relationship among these various remedies, and when necessary, how to analyze basic choices between remedies when multiple options are available;
- Acquiring basic drafting skills regarding injunctions;
- Acquiring basic skills in negotiation advocacy in the face of particular remedial relief;

Attendance and Class Participation Policy:

Beginning on September 5, 2017 an attendance sheet will be passed around the class each day; students who are present should sign their initials next to their names. The attendance sheet will be considered final; if your name is not initialed by the end of class, you will be considered absent. Students missing more than eight (8) will be dropped from the course. Signing in any student as present other than yourself is strictly prohibited and is a violation of the Honor Code on the part of all students involved.

I expect every student to be prepared to participate in class discussion. Failure to be prepared when called on or excessive absences when called on will affect your final grade. I reserve the right to adjust your final grade two (2) points in either direction based upon class participation.

Grading:

Your grade in this class has three components. First, 60 percent (60%) of your grade is based on three projects spread throughout the semester. These projects will involve (1) a problem set involving calculation of damages in various scenarios, (2) a negotiation associated with the issuance of an injunction, and, (3) drafting an order pertaining to an injunction in a specific
scenario. These projects will be equally weighted.

Second, forty percent (40%) of your final grade will be determined by your performance on a one to two hour closed book final examination. I will discuss the exam in greater detail later in the semester. Old exams will be available on the TWEN site for this course. There are also old exams available in the library. It is an extremely useful exercise to review these exams prior to the final examination for this class.

Reading Assignments (all references are to casebook unless otherwise noted)

In general we will follow the readings in the order set forth below. I will try to post specific reading assignments on the course website at least the day before each scheduled class and earlier if possible. Those assignments will specify the material to be read and will also contain the questions/issues that I will focus on in class regarding specific cases or problems. It is possible that we will not get through all of the material contained in this syllabus. If so, I will indicate deviations from the syllabus in the daily reading assignments, which are the last word as to the material for which you are responsible.

BACKGROUND

Chapter 1 – Introduction to Remedies
pp. 1-7

DAMAGES – THE BASIC COMPENSATORY REMEDY & SOME DISCUSSION OF PUNISHMENT

Chapter 2 – Compensatory Damages – Paying for Harm Caused to Others

A. The Basic Principle: Restoring Plaintiff to Their Rightful Position

1. The Basics
   pp. 9-15

2. Value as the Measure of Rightful Position
   pp. 16-27

3. Reliance & Expectancy as Measures of Rightful Position
   pp. 28-41

B. Consequential Damages
   pp. 41-49
C. Limits on Compensatory Damages

1. Contractual Limits on Remedies – Limitations on Remedies & Liquidated Damages
   pp. 53-68

2. Judicial & Statutory Limits on Remedies – The Doctrines of Avoidable Consequences, Offsetting Benefits & Collateral Sources
   pp. 68-80

D. How Do We Restore Plaintiff to Her Rightful Position When the Damage Cannot Be Measured in Dollars?

1. Personal Injuries, Death & Tort Reform
   pp. 108-37

2. Dignitary & Constitutional Harms
   pp. 137-50

Chapter 3 – Punitive Damages – Are they Deterrents or Punishment?

A. Common Law and Statutes
   pp. 171-84

B. The Constitution
   pp. 184-95

C. Punitive Damages in Contract
   pp. 196-203

INJUNCTIONS – PREVENTING OR UNDOING THE HARM CAUSED TO OTHERS

Chapter 4 – Different Kinds of Injunctions: The Measure & Scope of Different Kinds of Injunctive Relief

A. Preventive Injunctions

1. Preventing Wrongful Acts
   pp. 207-21

2. Preventing Lawful Acts that Might Have Wrongful Consequences
   pp. 221-32
B. Reparative Injunctions - Undoing Harm From Past Wrongful Consequences  
   pp. 232-44

C. Structural Injunctions  
   pp. 245-74

D. Modifying Injunctions  
   FRCP 60(b)(5) and possible handouts

Chapter 5 – Various Issues Related to Injunctions

A. The Substantive Requirements for Obtaining Permanent Injunctions
   1. Irreparable Injury
      a. Injunctions Involving Torts  
         pp. 297-311
      b. Specific Performance of Contracts  
         pp. 312-24
   2. Burden on Defendant or the Court  
      pp. 324-36
   3. Are these Requirements Weighed in Some Mushy Way or Is There a Scientific Test for Granting Permanent Injunctions?  
      pp. 337-42
   4. Other Reasons to Deny an Injunction  
      pp. 342-50

B. The Standards for Obtaining Preliminary Injunctive Relief
   1. The Substantive Standards for Preliminary Injunctions  
      pp. 350-58
   2. The Procedure for Obtaining Preliminary Relief (including TROs)  
      pp. 358-72

C. Injunctions Versus Damages When the Government is the Defendant
   1. Eleventh Amendment Immunity
Chapter 9 – Enforcing Injunctive Relief – Contempt

A. Three Kinds of Contempt
   pp. 601-13

B. Perpetual Coercion w/ Coercive Contempt
   pp. 613-19

C. Contempt of Anticipated Injunctions
   pp. 619-25

D. Collateral Bar Rule & Criminal Contempt
   pp. 625-36

E. Contempt & Third Parties
   pp. 636-48

Declaratory Remedies

Chapter 7 – Preventing Harm without Coercion – Declaratory Judgments
   pp. 453-66

Restitution as an Alternative Measure of Relief (Different from Damages)

Chapter 8 – Benefit to the Defendant as a Measure of Relief

A. Restitution from “Innocent” Defendants

1. Introducing Restitution - Mistake
   pp. 489-501

2. Measuring Restitution from the Innocent
   pp. 501-12
B. Recovering More the Plaintiff Lost

1. **Disgorging the Profits of the Conscious Wrongdoer**  
   pp. 513-25

2. **Measuring the Profits**  
   pp. 525-32

3. **Breach of Contract**
   
   i. **Disgorging the Profit**  
      pp. 539-46
   
   ii. **Rescission**  
      pp. 546-51

C. Restitutionary Rights in Specific Property

1. **Constructive Trust**  
   pp. 551-64

2. **Tracing**  
   pp. 564-76

**EQUITABLE DEFENSES**

Handouts on unconscionability, unclean hands, laches, estoppel and waiver

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**Miscellaneous Policies**

**Intellectual Pluralism**

The Law School community welcomes intellectual diversity and respects student rights. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean or Director of the Office of Student Rights and Responsibilities (http://osrr.missouri.edu). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.
**Academic Integrity**

Academic integrity is fundamental to the activities and principles of the Law School. All members of the Law School community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest, whether or not the effort is successful. The Law School community regards breaches of its Honor Code as extremely serious matters. In the event that you violate our Academic Integrity rules on any portion of the work required for this class, you may expect a failing grade in this course as well as possible disciplinary sanctions ranging from probation to expulsion. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or any other form of cheating, consult the course instructor.

**Disabilities**

If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me know as soon as possible. If disability related accommodations are necessary (for example, a note taker, extended time on exams, captioning), please register with the Office of Disability Services (http://disabilityservices.missouri.edu), S5 Memorial Union, 882-4696, and then notify me of your eligibility for reasonable accommodations. For other MU resources for students with disabilities, click on "Disability Resources" on the MU homepage.

**Requirement of Consent for Redistribution of Recordings of Classes**

University of Missouri System Executive Order No. 38 lays out principles regarding the sanctity of classroom discussions at the university. The policy is described fully in Section 200.015 of the Collected Rules and Regulations. In this class, students may make audio or video recordings of course activity unless specifically prohibited by the faculty member. However, the redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course is prohibited without the express permission of the faculty member and of any students who are recorded. Students found to have violated this policy are subject to discipline in accordance with provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri pertaining to student conduct matters. In addition, a violation may affect a student’s grade.